

Application No. 10/098,683
Amendment dated June 18, 2007
Reply to Office Action of March 19, 2007

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REMARKS

Applicant amended claims 54, 67, 79, and 92, and added new claims 104-108 to further define Applicant's invention.

The Examiner rejected claims 54-90 and 92-103 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-84 of U.S. Patent No. 6,758,849; and rejected claims 54-90 and 92-103 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-84 of U.S. Patent No. 6,364,880. Applicant is submitting concurrently with this Amendment a Terminal Disclaimer of the terminal part of any patent granted in the present application which would extend beyond the expiration of U.S. Patent Nos. 6,758,849 and 6,364,880. Applicant submits that the obviousness-type double patenting rejection has been overcome.

In the Office Action, the Examiner rejected claims 54-90 and 92-103 (including independent claims 54 and 79) under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,026,373 to Ray et al. ("Ray"). In response thereto, please note that independent claims 54 and 79 have been amended. Amended independent claim 54 now recites an apparatus comprising an interbody spinal fusion implant, and a liquid fusion promoting material and a solid fusion promoting material provided in the hollow interior of the implant. Furthermore, amended independent claim 79 now recites an apparatus comprising an interbody spinal fusion implant, and a bioactive material and a bioresorbable material provided in the hollow interior of the implant. Ray does not teach or suggest an interbody spinal fusion implant combined with liquid and solid fusion promoting materials as recited in independent claim 54, or an interbody spinal fusion implant combined with bioactive and bioresorbable materials as recited in independent claim 79. As such, Independent claims 54 and 79 are patentable over the 35 U.S.C. § 103(a) rejection based on Ray.

In view of the foregoing remarks, Applicant submits that independent claims 54 and 79 are patentable and that dependent claims 55-78, 80-90, and 92-108 dependent

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from independent claims 54 or 79, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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Dated: June 18, 2007

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